IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2007

CORAM

THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

TAX CASE NO.222 OF 2004
(Appeal NO.217 of 2004)

Commissioner of Income Tax
Chennai - X ... Appellant

Versus

Associated Electrical Agencies
Chennai - 600 034. ... Respondent

Prayer: Appeal filed under Section 260-A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal Chennai 'B' Bench dated 20.10.2003 in I.T.A.No.2190/Mds/94 for the assessment year 1991-92 against the order of the Commissioner of Income Tax (Appeals)- I, Madras-34 dated 02.08.94 in ITAppeal No.49/94-95 against the order of the Assistant Commissioner, Central Circle II (I) Madras - 34 dated 29.03.94 in PA.No./GIR.No./47-000-EQ-3001.

For Appellant : Mr.N.Muralikumaran
Sr.Standing Counsel for
Income-tax.
For Respondent : Mr.N.Devanathan

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J.)

The assessee was an unregistered firm. For the assessment year 1991-92, the assessment of the assessee was completed under Section 143(3) of the Income-tax Act on 29.3.1994 on a total income of Rs.36,27,580/-. In the course of assessment proceedings, the assessing officer noticed from the profit and loss account that the assessee has claimed a sum of Rs.3,27,895/- towards bonus, however, in the balance sheet as on 31.3.1991, the assessee has shown a sum of Rs.84,01,475.98ps. under the head "Accounts payable". The assessing officer called for the details regarding payment of bonus. The assessee's representative stated that the bonus was paid to the staff on 31.10.2001 after drawing the cash from the Bank. On verification of the accounts, the assessing Officer found that though there was cash withdrawal from the Bank on 31.10.2001, there was no entry in the books of accounts relating to disbursement of bonus and even the vouchers did not contain the date of receipt except in a few cases

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wherein the date of receipt of bonus was mentioned as 2.11.1991. In the absence of any materials to vouchef the payment of bonus on 31.10.2001, the assessing officer was of the view that the bonus could not have been disbursed on the same day for the staff working at Cochin and Bangalore Branches. Finally, it was conceded that the bonus was disbursed to the staff of Madras Branch on 1.11.1991, Cochin Branch on 2.11.1991 and Bangalore Branch on 2.11.1991. In view of the above, the assessing officer disallowed the claim of bonus payment of Rs.3,27,895/- applying the provisions of Section 43-B.

2. Aggrieved by the disallowance made by the assessing officer, the assessee filed appeal before the Commissioner of Income-tax (Appeals). The appeal came to be dismissed on the ground that the bonus has not been actually paid on or before 31.10.1991. In the second appeal filed in I.T.A.No.2190/Mds/94, the Tribunal by its order dated 6.11.2003 held that actually the cash was withdrawn on 31.10.1991 itself; that the delay in distribution of bonus was occurred while transmitting the money from one branch to another through Bank and thus the delay was justifiable and acceptable. On that basis, the Tribunal has concluded that the claim made by the assessee was an allowable expenditure and on that reason, set aside the order of the lower authorities. The revenue filed the present appeal questioning the correctness of the order of the Tribunal by formulating the question of law as follows:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in directing the assessing officer to allow the payment of bonus to staff as deduction even though the payment has not been made on or before the due date for filing the return of income?"

3. Though the appeal was filed by the revenue, learned counsel appearing for the assessee/respondent contended that considering the tax effect involved, which is very negligible, this is not a fit case to entertain the appeal for consideration by relying on instruction No.1979 issued by the Central Board of the Central Board of Direct Taxes in Circular F.No.279/126/98-ITJ, dated 27.3.2000.

4. However, learned counsel for the revenue contended that when the appeal was entertained by this Court and was pending before this Court from the year 2004, the Court should not throw away the case without deciding the issue on merits. The circular with which reliance has been made by the learned counsel for the respondent is not an unqualified embargo on the revenue proceeding with the matter in appeal. He relied on a decision of this Court in the case of COMMISSIONER OF INCOME-TAX VS. P.S.T.S.THIRUVIRATHNAM AND SONS reported in (2003) 261 ITR 406.

5.We heard the argument of the learned counsel on either side and perused the materials on record.

6. The factual issue is undisputed that the tax effect involved in this appeal is only few thousand rupees. The above referred judgment was rendered in a reference case and the question of law therein was referred for the decision of this Court. This Court rejected the contention of the

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respondent therein by saying that the circular dated 4.11.1987 was not an unqualified embargo on the Revenue proceeding with the matter in appeal where the amount of tax in issue was Rs.30,000 or less. Several exceptions were set out in that circular. If the assessee wanted the benefit of the circular, it should have put the Revenue on notice when the Revenue applied for having the question referred so that the Revenue could have gathered relevant material, if any, to show the matter was within the expected category. Incidentally, one of us (K.Raviraja Pandian,J.) was also a party to the said judgment. The said judgment has not denied the benefit of the circular to the assessee, but only cautioned the assessee that if the assessee put on notice the revenue, the revenue would have gathered material and satisfied whether it is a fit case for filing appeal with reference to the exception clause contained therein. Hence, the judgment cannot be regarded as one which decided the scope and binding nature of the circular and decided in favour of the revenue.

7. In the case of COMMISSIONER OF INCOME-TAX VS. RAJASTHAN PATRIKA LIMITED reported in (2002) 258 ITR 300, the Rajasthan High Court categorised the circular as one of administrative instruction and held that the administrative instruction cannot prevail over the statutory provision.

8. In the case of RANI PALIWAL VS. COMMISSIONER OF INCOME-TAX reported in (2004) 268 ITR 220, the Punjab & Haryana High Court has held that from the perusal of the order of the Tribunal, it was clear that no plea was raised before the Tribunal that appeal was not entertainable because of the tax effect was less than Rs.1 lakh in each of the assessment year and therefore the High Court did not allow the assessee to raise the plea for the first time before the High Court and further held that the circular was not binding on the Tribunal and further held that such a plea was not a question of law.

9. The circular referred to in the above said judgment has been subsequently revised in Circular NO.F/279. It is not in dispute in this case that the tax effect is only a few thousand rupees and not exceeded the monetary limit of Rs.2 lakhs prescribed in the above said circular for filing appeal before High Court. The exceptions stated in the circular for contesting the case irrespective of the revenue effect were:

(i) Where Revenue audit objection in the case has been accepted by the Department.
(ii) Where the Board's order, notification, instruction or circular is the subject-matter of an adverse order.
(iii) Where prosecution proceedings are contemplated against the assessee.
(iv) Where the constitutional validity of the provisions of the Act are under challenge.
and the monetary limit would not apply to writ matters. The Circular would come into effect from 1.4.2000.

10. We are of the considered view that none of the exceptions stated in the circular are applicable to the facts of the present case. The circular was stated to be issued by invoking the statutory power under Section 119 of the Income-tax Act. The appeal is filed under Section 260-

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A of the Income-tax Act. It is well settled principle of law that each and every provision of a statute has to be given the same importance. One provision cannot be alleviated to a higher pedestal than the other provision, of course, unless or otherwise specifically stated either in the scheme, the Act or in the provision itself that a particular provision is subjected to or qualified by any other provision or the provision can be given effect to notwithstanding anything contained in any other provisions by assigning overriding effect. Hence, the contention that notwithstanding the circular, which was issued under Section 119 of the Income-tax Act, the appeal could be filed by the revenue under Section 260-A has to be rejected for the reason that if the contention is accepted, one of the Section would become virtually otiose and that cannot be the intention of the law makers. Hence, the above judgments cannot be taken in aid for non-suiting the respondent/assessee from taking shelter under the Government Order.

11. In this case, not only the tax effect involved is nearly Rs.5,000/-, but also the other qualification prescribed in the circular were also not available or in existence to carve out the case to bring outside the purview of the circular. Even de hors the circular, if the facts are considered, the assessee is entitled to claim the benefit for the next assessment year if the same was negatived for the assessment year in question. Further, the point in issue is whether the bonus as claimed by the respondent has been paid within 31.10.1991 or subsequent to that date, can no stretch of imagination be considered as a question of law rather than substantial question of law as provided under Section 260-A of the Income-tax Act.

12. The Supreme Court in the case of COMMISSIONER OF GIFT-TAX, GUJARAT VS. EXECUTORS AND TRUSTEES OF THE ESTATE OF LATE SH.AMBALAL SARABHAI reported in (1988) 170 ITR 144, under Gift Tax Act, having regard to the fact that the gift was of the year 1964, the total gift tax assessed was Rs.5661/-, upon a fresh determination of the value of the shares adopting the somewhat intricate processes inherent in the "profit-method" of valuation, the difference in the quantum of the tax might, perhaps, not be substantial. The magnitude of the mechanism for refixation of the value of the gifts and the difference in the quantum of the tax it might result in, do not bear a reasonable or sensible proportion. Having regard to the pecuniary involvement in that case, which was obviously small, the Supreme Court observed that they should not expose the parties to a fresh round of litigation.

13. In the case of COMMISSIONER OF INCOME-TAX VS. DIGVIJAY SINGH reported in (2007) 292 ITR 314, the Madhya Pradesh High Court, after referring to the judgment of the Bombay High Court in the case of COMMISSIONER OF INCOME-TAX VS. ZOEB Y.TOPIWALA (2006) 284 ITR 379, wherein the Bombay High Court has held that the directions issued by the Board dated March 27, 2000, directing the Department not to raise questions of law where the tax effect is less than Rs.2 lakhs was binding on the Revenue and dismissed the appeal in which tax effect was less than Rs.7,000 as not maintainable by holding that the direction issued by the Board are binding on the Department.

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14. In the case of COMMISSIONER OF INCOME-TAX VS. CAMCO COLOUR CO., reported in (2002) 254 ITR 565, the Bombay High Court has reproduced the circular issued by the Ministry of Finance dated 27.3.2000 in which it was directed that the appeals under Section 260-A of the Income-tax Act in which the tax effect was less than RS.2 lakhs should not be preferred. In all the cases relied on by the assessee, the long line of judicial opinion is that if the tax effect is less than the one stated in the circular, the revenue need not agitate the issue on appeal and the circular is binding on them.

15. For all the above reasons, the appeal filed by the revenue is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
Income Tax Appellate Tribunal,
'B' Bench, Rajaji Bhavan,
Besant Nagar, Chennai-600 090

2.The Commissioner of Income-tax
(Appeals) I, Chennai - 34.

3.The Asst.Commissioner of
Income-tax, Central Circle
II(1), Madras.

4. The Commissioner of Income Tax,
Chennai.

1 CC To Mr.N.Muralikumaran, Standing Counsel for Income Tax, SR NO.51438.

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